QUESTIONS AND ANSWERS

PAY EQUITY IN THE WORKPLACE

THE
PAY EQUITY
COMMISSION

BILL 154, THE PAY EQUITY ACT

As of January 1, 1988, the proclamation date of Bill 154, employers in Ontario are legally bound to set up pay equity plans to make sure that their salary and wage scales are based on the value of work performed – regardless of the sex of the person doing the work.

Pay adjustments must be made if it is discovered that women are being paid less than men for work of equal or comparable value.

Ontario

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PAY EQUITY: AN OVERVIEW

Is pay equity different from equal pay for equal work?

Yes. Since 1951, Ontario has had a law that requires employers to pay men and women equally for substantially the same kind of work. Consequently, electricians are entitled to the same wage no matter whether a man or a woman is performing the job.

Pay equity requires employers to pay men and women the same for work that is different but of equal or comparable value.

Why is pay equity necessary?

Historically, men and women have tended to do different kinds of work. Work that has traditionally been performed by women, however, has generally been undervalued.

Even when women do "women's work" that requires more education, more training or more responsibility than that done by men, in many cases their work is undervalued and, as a result, also underpaid.

This historic undervaluation of women's work has contributed to what is called "the wage gap" – the difference between the average earnings of men and women.

In 1987, the average salary for a woman working full-time in Ontario was $20,710. The average salary for a man working full-time was $32,120. That is a 36 per cent wage gap.

The wage gap stems from a number of different factors, including differences in education, experience, hours worked, unionization, and so on. But a significant portion of the gap – estimated to be 1/4 to 1/3 – exists because of the historic undervaluation of the work done by women.

How will pay equity address this problem?

Pay equity legislation aims to eliminate only that portion of the wage gap that has resulted from the undervaluation of women's work.

The legislation will require comparisons between job classes predominantly occupied by women and job classes predominantly occupied by men in the same establishment.

Where it is found that job classes are of equal or comparable value – and yet the female jobs are underpaid – compensation in the female-dominated job classes must be improved. Both women and men in these female job classes will receive adjustments.

What pay equity experience can employers draw on?

Equal pay for work of equal value legislation is not new to employers. Since 1978, for example, federal government and Crown corporation employees, and federally-regulated employers such as chartered banks, Bell Canada and transportation firms, have been required to comply with federal pay equity legislation.

Quebec has legislated pay equity for both its private and public sectors, and so have Great Britain and other countries in the European Economic Community.

Pay equity is also in place in the public sector in Manitoba and in a number of American cities and states.

Saskatchewan, Prince Edward Island and the Yukon have pay equity provisions, and Nova Scotia is planning to introduce pay equity in both the private and public sectors.

COVERAGE

What does the Pay Equity Act require employers to do?

The Act requires all employers in the public sector, and private sector firms with 100 employees or more, to develop, post and implement pay equity plans.

Private sector firms with 10 to 99 employees can choose to develop and post plans but they are not required to do so under the Act. However, they are still required to achieve pay equity and may be subject to complaints from their employees if they do not.

The legislation does not cover private sector firms with fewer than 10 employees, but these employers may voluntarily choose to achieve pay equity.

Pay equity implementation will follow the following timetable:

Employer	Posting	Wage Adjustments Begin
Public Sector	Jan. 1, 1990	Jan. 1, 1990
Private Sector with 500 + employees	Jan. 1, 1990	Jan. 1, 1991
Private Sector with 100-499 employees	Jan. 1, 1991	Jan. 1, 1992
Private Sector with 50-99 employees	Jan. 1, 1992*	Jan. 1, 1993
Private Sector with 10-49 employees	Jan. 1, 1993*	Jan. 1, 1994

**Posting is voluntary for private sector employers with fewer than 100 employees. However, employers who choose not to post must achieve pay equity by Jan. 1, 1993 if they have between 50 and 99 employees, or by Jan. 1, 1994 if they have between 10 and 49 employees.*

How is "employer" defined?

Generally, an employer is any organization that has employees in Ontario. For purposes of the Pay Equity Act, however, special consideration must be given to defining who the employer is, especially in more complex corporate arrangements.

The common law defines an employer as one who exercises fundamental control over an employee. In order to determine who the employer is, it might be useful to consider the following:

- Who determines the compensation of the employees?
- Who exercises direction and control over employees?
- Who hires the employees?
- Who fires the employees?
- Who disciplines the employees?
- Whom do employees perceive as the employer?
- Was there an intention to form an employment relationship between the worker and the employer?

How is employer size determined?

In the private sector, the size of an organization must be determined. It is determined by the number of its employees. The number of employees is calculated as the average number of workers an organization employed between January 1, 1987 and January 1, 1988.

If an employer's first employee began work in Ontario any time after January 1, 1987 (say May 8, 1987, for example), the number of employees is calculated as the average number employed from that day to January 1, 1988.

Full-time, part-time, and casual employees are all included when calculating the size of an organization.

When are newly-established organizations required to comply with the Act?

New organizations that hired their first employees after January 1, 1988, are required to provide pay equity immediately – as opposed to following the timetable for their sector and size.

Which timetable is followed by an existing company whose employees either increase or decrease after January 1, 1988?

If a company is covered by the legislation as of January 1, 1988, an increase or decrease in the number of people employed after that date makes no difference to plan posting and wage adjustment dates.

Which employees are covered by the Pay Equity Act?

The Pay Equity Act covers full-time and permanent part-time employees working in predominantly female job classes in the public sector; and in private sector firms that have 10 or more employees.

Part-time employees working at least 1/3 of the normal work period are covered under the Act.

Workers who are employed on a seasonal basis, in the same position, for the same employer are also covered.

Part-time employees performing work on a regular and continuing basis, although for less than 1/3 of the normal work period, are covered by the Act.

Which employees are not covered?

The legislation does not cover employees performing casual jobs or students working during their vacations. It does not cover private sector firms with fewer than 10 employees.

How are "casual employees" defined?

Casual employees are those performing jobs required for less than 1/3 of the normal work period – as long as they are not employed on a regular and continuing basis.

What is an "establishment"?

The Act says that an "establishment" is all the employees of an employer who work in a given geographic division.

A geographic division, for the purposes of pay equity, can be a county, a regional municipality, territorial district, or Metropolitan Toronto.

An employer may decide to expand the definition of establishment to include two or more geographic divisions. If the workplace is unionized, this must be agreed to by the bargaining agent.

However, an employer may not subdivide a geographic division for the purposes of defining establishment. All work places in a given geographic division must be included as part of the establishment.

Take this example:

► A company with a warehouse in Ottawa and offices in another area of the same city will be regarded as one establishment. If the same employer has a warehouse in Toronto, it won't be necessary to compare the job classes in Toronto with those in Ottawa since these could be two establishments.

In this example, let's say that the definition of establishment is expanded by the employer or, in a unionized setting, by an agreement between the employer and bargaining agent. In that case, it would be possible to include both Ottawa and Toronto employees in a redefined establishment.

THE PAY EQUITY PLAN

What is involved in developing a pay equity plan?

The number of plans an employer must develop will depend on the number of establishments, and on the number of bargaining units in each establishment. In each establishment, a separate plan is required for all non-union workers.

What do employers in the public sector and employers in the private sector (with 100 or more employees) have to do to ensure pay equity?

All public sector organizations, regardless of size, and private sector firms with 100 employees or more, are required to develop, post and implement pay equity plans.

The general framework of the process is as follows:

► There are 10 basic steps:

1. First, identify the number of pay equity plans required in each establishment.

► Then, for each pay equity plan required:

2. Determine female job classes and male job classes according to Act's definition (see page 6 of this publication)
3. Determine possible comparable jobs
4. Select an appropriate, gender-neutral method of job comparison
5. Evaluate comparable job classes which meet the female- or male- dominated definition
6. Compare compensation of job classes of similar value.
7. Determine adjustments required to achieve pay equity
8. Prepare pay equity plan document
9. Post pay equity plan
10. Make required pay adjustments.

The pay equity plan document outlines the comparison method used; the job classes compared; and the compensation of those job classes found to be of similar value. The plan also sets out how required pay equity wage adjustments will be made. This document is then posted in the workplace so that all affected employees can see it.

If no concerns are raised by employees about the document, the pay equity plan is considered approved. It is not necessary for the employer to file the plan with the government.

In a unionized work place, employers and bargaining agents negotiate the pay equity plan. If both parties agree, the plan is considered approved.

What does a private sector employer with 10-99 employees have to do to ensure pay equity?

Under the legislation, employers in smaller, private sector firms are not required to develop and post a pay equity plan. However, smaller employers might choose to develop and post a plan since it will help them determine whether or not pay inequities exist in their establishments and will allow them to correct such inequities over time.

If smaller employers choose not to develop and post pay equity plans they must, nonetheless, ensure that pay equity exists in their workplace. Employees of these companies are permitted to complain under the Act if they believe the Act has been contravened.

In these situations, if an employee complains and that complaint is found to be valid, the employer may be required to make the necessary wage adjustments immediately – even if it takes more than 1% of payroll. And that adjustment may be retroactive.

What do private sector firms with fewer than 10 employees have to do to ensure pay equity?

Private sector firms with fewer than 10 employees are exempt under the Act.

JOB CLASSES

What is a job class?

Jobs may be grouped into "job classes" for purposes of the Act. The Act defines job class as those positions in an establishment that: have similar duties and responsibilities; require similar qualifications; are filled by similar recruiting procedures; and have the same compensation schedule, salary grade or range of salary rates.

However, a "job class" may also be comprised of a single job. In fact, a single job class may have only one incumbent.

How are female-dominated and male-dominated job classes defined?

A female-dominated job class is generally one in which at least 60 per cent of the positions are held by women. A male-dominated job class is generally one in which at least 70 per cent of the positions are held by men.

On what basis will job class comparisons be made?

The comparison of job classes must include consideration of:

- skill – which generally includes education, experience or special abilities required to perform a job;
- effort – which generally includes physical and mental effort;
- responsibility – which generally includes decision-making, and responsibility for people, equipment and/or budgets; and
- working conditions – which generally considers the working environment of a job including such aspects as dirt, noise, stress and risk to health.

What does "historical incumbency" mean?

Historical incumbency refers to the historical pattern of employment for a particular job class within an employer's establishment.

If the job class in question is one that traditionally has been filled by men – but has recently been filled by women – it may still be considered a male job class. Similarly, a gender-neutral job class may currently exist which historically has been considered a female job class.

What does the Act mean when it talks about gender-stereotyping?

The Act allows for the use of traditional gender stereotypes of work in determining whether or not a job class is male- or female-dominated.

For example, if an employer has one truck driver and that driver is female, it can be argued that her job class is nevertheless male-dominated – because truck-driving has been traditionally a job performed by men.

Similarly, nursing is a profession that has been traditionally followed by women. If an employer happens to have one male nurse, his job class could still be considered to be a female job class.

Even if job classes are comparable in value, will there still be acceptable reasons for wage differences?

Yes. Wage differences may result from formal seniority systems, temporary training assignments, formalized merit pay, red-circling and skills shortages. These exceptions must apply to men and women equally, however, and an employer must be able to justify such differences.

JOB COMPARISON

How can different jobs be compared?

Let's take a secretary's job and that of a groundskeeper. While the secretary's job may require less physical effort and have better working conditions than the groundskeeper's, her job could require more responsibility, mental effort and skill. If that's the case, the overall value of the secretary's job class could be the same as the groundskeeper's – and she should be paid the same.

What methods of job comparison can be used?

Employers can choose to use existing comparison systems or to develop a new one. The method chosen, however, has to assess skill, effort, responsibility and working conditions. It must also be free of gender-bias.

The method used to compare job values could be as simple as ranking the job classes according to the four factors listed above. Or, it could be a more sophisticated process in which points are assigned to the components of the four factors and then totalled to provide a "score" for evaluating a job class.

JOB EVALUATION

How does gender-bias influence job evaluation and compensation practices?

There are a number of influences.
When employers establish pay rates they sometimes overlook certain aspects of work typically done by women – but not aspects of work typically done by men. For example:

- They may overlook the communications skills needed to be a receptionist – but not the manual skills of machinery repairmen.
- They may overlook the effort of lifting heavy patients – but not of lifting heavy objects.
- They may overlook the amount of responsibility involved in taking care of children – but not the responsibility of equipment and finances.
- They may overlook the stress of looking after people with serious mental problems – but not the noise of machinery.

By overlooking these aspects of a job, employers have consequently undervalued them – and hence the problem.

Similarly, job titles and job perception can lead to certain assumptions about the value of a job. A male who describes his job as "managing," for example, might sound more important than an administrative assistant who describes her job as "co-ordinating." While the title of "manager" might sound superior, the position of "administrative assistant" might have significant responsibility.

Is a single job evaluation method required?

No. In fact, it's quite possible that an employer could use different methods of job evaluation for different pay equity plans.

Will The Pay Equity Commission produce a prototype gender-neutral comparison system?

The Commission does not plan to develop a prototype. It can provide information, however, on detecting gender-bias in job comparison approaches and can clarify the requirements of the legislation.

Are job descriptions required for comparison purposes?

The Pay Equity Act does not specify that job descriptions are required. In assessing different jobs, however, job content must be reviewed on the basis of skill, effort, responsibilities and working conditions involved. This can be done in a number of ways including an examination of job specifications, conducting interviews, distributing questionnaires, or using formalized job descriptions.

How can smaller firms achieve pay equity when they don't have time to do formal job analysis?

Smaller businesses frequently use informal job comparisons to determine compensation for their employees. Lack of formal systems does not mean these employers will be unable to meet the requirements of the legislation.

Employers can continue to use informal methods of job comparisons – but they must be able to justify such methods and prove that they are free of gender discrimination. They must also be able to demonstrate that skill, effort, responsibility and working conditions have been part of the consideration in determining value.

PAY EQUITY IN A UNIONIZED WORKPLACE

How does pay equity work in a unionized setting?

In unionized workplaces, the employer and bargaining agent negotiate the pay equity plan.

What elements of pay equity are subject to negotiation?

The legislation defines a number of issues which employers and unions will negotiate.

They include:

- the method used to compare job classes;
- the definition of male and female job classes;
- the rate and timetable for wage adjustments.

What are the union's and management's responsibilities? What are the penalties?

Every employer covered under the Act must establish and maintain compensation practices that provide for pay equity in all of their establishments.

Any employer that establishes or maintains, or any union that agrees to the establishment or maintenance of gender-discriminatory compensation practices, is contravening the legislation.

Where a review officer from the Pay Equity Office feels an employer or bargaining agent has contravened the Act, he or she may order compliance.

If an employer, or employer and bargaining agent do not comply with mandatory preparation of pay equity plan/s, the Pay Equity Office can order the parties to prepare and implement a plan.

If the Pay Equity Office feels that a plan is not being implemented according to the terms of the Act, the Office can order the employer to take the necessary steps to do so.

Do agreements concerning a pay equity plan between a union and the employer have to be ratified by the union membership?

The Pay Equity Act does not specifically address this issue. Some union constitutions require that items negotiated by bargaining agents be ratified by the membership.

Can pay equity be negotiated at the same time as regular collective agreements?

Pay equity can be negotiated separately or at the same time as regular collective agreements – as long as the timetable for pay implementation is followed.

What if no male-dominated job class exists for comparison purposes within the bargaining unit?

In unionized situations, male job class comparisons for female-dominated job classes are first sought within the bargaining unit. If no male-dominated comparison exists within the bargaining unit, the search for comparison extends throughout the establishment. This process also applies to a non-unionized female job class.

WAGE ADJUSTMENTS

Is there a limit to annual wage adjustments?

Employers may limit annual pay equity adjustments to one per cent of the previous year's total Ontario payroll.

In the public sector, however, employers will have to complete adjustments by January 1, 1995. This may result in some public sector pay equity adjustments exceeding the one per cent annual payout.

How is the 1 per cent of payroll allocated among bargaining units, or among unionized and non-unionized employees, or in relation to different establishments?

The legislation does not stipulate how the one per cent payout is to be allocated. All female job classes that require compensation adjustments, however, must be included.

In addition, employees in the lowest-paid female job classes must receive increases in compensation at a faster rate until they have achieved pay equity or until they have reached the compensation level of the next-lowest-paid female job class(es).

What is meant by "payroll"? What is meant by "compensation"?

"Payroll" refers to wages and salaries only – a figure employers can easily determine. The one per cent calculation is based on the employer's total annual Ontario payroll.

Pay equity adjustments, however, may be made in wages and salaries, in benefits, or in a combination of both – as long as a minimum of one per cent of the employer's previous year's payroll is used.

"Compensation" refers to all forms of compensation a person receives for work performed – salaries and wages, benefits and perquisites.

Will pay reductions be permitted?

No. Pay reductions will not be permitted to achieve pay equity.

What must employers do once their pay equity plans are completed?

Once the pay equity plans have been completed and implemented, employers, or employers and bargaining agents, have an on-going responsibility to ensure that they maintain equitable, gender-neutral compensation practices in their establishments.

COMPLAINT RESOLUTION

What opportunities do employees have to comment on a pay equity plan?

NON-UNIONIZED EMPLOYEES

When the pay equity plan is posted in the workplace, employees have a 90-day review period during which they can discuss concerns with their employer or the Pay Equity Office.

Employers must inform their employees whether the pay equity plan will be amended as a result of employees' comments – and they have up to seven days following the initial 90-day period to do so.

If a plan is amended, it must be posted once again – within seven days following the 90-day period – in the workplace for employee review. Employees have a subsequent 30 days to file concerns with the Pay Equity Office, whether or not these concerns were initially raised with the employer.

Pay equity plans are considered approved if no concerns are forthcoming from employees.

UNIONIZED EMPLOYEES

In unionized workplaces, employers or bargaining agents may notify the Pay Equity Office if agreement cannot be reached with the employer regarding a pay equity plan.

A pay equity plan for unionized employees will be considered approved if the bargaining agent and the employer have agreed to its terms.

What happens when a bargaining agent and an employer are unable to agree on a pay equity plan?

If an agreement on a pay equity plan cannot be reached by the prescribed date under the legislation, the bargaining agent or the employer must notify the Pay Equity Office.

At this point, a review officer will attempt to effect a settlement between the union and the employer. If a settlement cannot be reached, the review officer may issue an order to resolve the matter.

Thereafter, either party may appeal a review officer's order through the Pay Equity Hearings Tribunal.

What protection do employers have against inappropriate pay equity complaints?

A review officer will exercise judgement in investigating employee complaints. If a review officer finds that a complaint is trivial, frivolous or made in bad faith, the Act gives the officer the authority not to pursue it.

What protection do employees have if they lodge a complaint about their employer's pay equity plan?

Employers are prohibited from penalizing employees for lodging complaints. In addition, employees who seek the assistance of the Pay Equity Office can request that their identity be kept confidential.

What kind of complaint can be filed after the plan has been approved?

Complaints may be lodged if a posted pay equity plan is not being administered according to its terms, or if the plan is no longer appropriate due to new circumstances in the work place. New circumstances could be those in which, for example, a corporate merger has affected job classes previously evaluated.

Since private sector employers with 10 to 99 employees are not required to develop or post pay equity plans, how can employees ensure that such companies still achieve pay equity?

If an employee feels that the employer has established, or is maintaining, compensation practices that do not provide for pay equity, he or she may file a complaint with the Pay Equity Office. Pay equity complaints of this nature, however, can only be made following the date by which that employer would be required to make any necessary wage adjustments.

Can an employer or bargaining agent be penalized for not complying with the Act?

Fines of up to $2,000 for an individual, or up to $25,000 in any other case, may be levied against anyone who: interferes with a review officer's duties; intimidates or discriminates against anyone exercising their rights under the Pay Equity Act; or contravenes an order of the Hearings Tribunal.

Is a decision of the Pay Equity Hearings Tribunal final?

The Tribunal is an independent body with expertise in pay equity. In most cases its decision is final. Recourse to the courts is limited but could be made in cases where it could be shown, for example, that the Tribunal has gone beyond the scope of the Pay Equity Act.

THE PAY EQUITY COMMISSION

Where do I go for information or help?

The Pay Equity Commission has been set up to help employers, employees, and bargaining agents in both the public and private sectors achieve pay equity and to resolve disputes concerning pay equity. The Commission has two parts: the Pay Equity Office and the Pay Equity Hearings Tribunal.

The Pay Equity Office

The Pay Equity Office organizes seminars, operates a hotline, and distributes information sheets like this brochure to tell employees and employers their rights and responsibilities under the law. It also provides conciliation services in situations where employers and employees can't agree on a pay equity plan, or where there is a contravention of the Act.

The Pay Equity Hearings Tribunal

The Pay Equity Hearings Tribunal is a special body established to decide pay equity issues between employers and employees which cannot be settled either in the workplace or by the Pay Equity Office.

This booklet highlights and explains some aspects of the Pay Equity Act. Readers wanting greater detail are urged to consult the Act itself.

HOW TO REACH THE PAY EQUITY COMMISSION

For more information or advice, or if you want to be on our mailing list, please contact:

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INFORMATION HOTLINES:

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Cette brochure est
également disponible en français.
Veuillez en faire la demande à
la Commission de l'équité
salariale, à l'adresse
ci-haut.

Pay equity, by removing gender-bias from pay practices, will contribute not just to fairer and consequently more productive workplaces, but also to the creation of a society which treats women and men equally.

Pay equity can be achieved. And it can best be achieved through the co-operation of those affected. The Pay Equity Commission will give these groups the support necessary to comply with Ontario's pay equity legislation: policy and research; information and education; and, if necessary, conciliation and appeal.

THE
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